

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TRACI MAY R., on behalf
of E.A.O.B. (a minor),

Plaintiff,

-v-

5:21-CV-607

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

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Baltimore, MD 21235

TIMOTHY SEAN BOLEN, ESQ.
Special Ass't U.S. Attorney

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On May 25, 2021, plaintiff Traci R.¹ (“plaintiff”) filed this action on behalf of E.A.O.B., a minor child (“claimant”), seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner” or “defendant”) denying claimant’s application for children’s Supplemental Security Income (“SSI”) under the Social Security Act (the “Act”). Dkt. No. 1.

After the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 13, both parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s final decision denying benefits will be treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 16, 17.

On September 20, 2022, U.S. Magistrate Judge Thérèse Wiley Dancks advised by Report & Recommendation (“R&R”) that the Commissioner’s decision be affirmed and plaintiff’s complaint be dismissed. Dkt. No. 19. As Judge Dancks explained, the Administrative Law Judge (“ALJ”) assigned to hear claimant’s case had applied the correct legal standards and relied on substantial evidence to conclude that claimant had less-than-marked limitations in the three functional equivalence domains at issue. *Id.*

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

Plaintiff has filed objections. Dkt. No. 20. In her objections, plaintiff argues the ALJ's analysis was "skewed and hypocritical, relying on benign evidence at the overwhelming exclusion of probative evidence" that supported claimant. *Id.* The Commissioner has filed a response to plaintiff's objections. Dkt. No. 21. There, defendant argues Judge Dancks correctly evaluated the ALJ's written decision. *Id.* According to defendant, plaintiff's objections are largely a restatement of the arguments made in her opening brief; *i.e.*, that the ALJ cherry-picked evidence to support his decision. *Id.*

Upon *de novo* review, the R&R will be accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

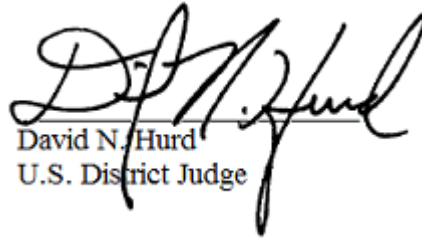
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. The Commissioner's motion for a judgment on the pleadings is GRANTED;
3. Plaintiff's motion for a judgment on the pleadings is DENIED;
4. The Commissioner's decision is AFFIRMED; and
5. Plaintiff's complaint is DISMISSED.

The Clerk of the Court is directed to enter a judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: October 20, 2022
Utica, New York.



David N. Hurd
U.S. District Judge